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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/690,473	10/18/2000	Brett Haarala	06530-0020	1891
22852	7590	12/16/2003	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			HAYES, MICHAEL J	
		ART UNIT		PAPER NUMBER
		3763		<i>26</i>
DATE MAILED: 12/16/2003				

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 26

Application Number: 09/690,473
Filing Date: October 18, 2000
Appellant(s): HAARALA ET AL.

MAILED
DEC 16 2003
GROUP 3700

Anthony Gutowski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/30/03.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 60, 61, 63-68, 70-72, 74-79, 113, and 114 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) ClaimsAppealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,857,053 DALTON 8-1989

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 60, 61, 63-68, 70-72, and 74-79 are rejected under 35 U.S.C. 102(b) as being anticipated by DALTON (U. S. Patent No. 4,857,053). Dalton discloses an access port made from titanium having upper and lower bodies, an outlet for attaching a catheter, suture holes, entry and access sites located in a common septum that are perpendicular to each other or to the outlet, extending in a direction away from the reservoir to define reservoir volume and septum wall thickness. The upper body or body portion 30 includes target areas or holes for entry and access sites. Upper body 30 comprises raised edges that surround a given target area. See Figs. 4-6; col. 5, line 66 - col. 6, line 48.

The rejection is copied from the Final Office Action with a change in the claim numbers rejected to reflect the after final amendment canceling several claims.

(11) Response to Argument

A. 35 USC 102 rejection of claims 60, 61, 63-68, 70-72, and 74-79, based on HANCOCK (U. S. Patent No. 4,840,615).

These rejections are withdrawn.

B. 35 USC 102 rejection of claims 60, 61, 63-68, 70-72, and 74-79, based on DALTON (U. S. Patent No. 4,857,053).

Applicant states that Dalton does not disclose a septum between upper and lower body parts having an outer surface of the septum form a portion of the device's exterior surface.

Applicant states Dalton has a layer 66 surrounding the septum so that no part of the septum can have an outer surface forming an exterior surface of the device. Furthermore, in a footnote, Applicant remarks that one of ordinary skill in the art would not consider web 30 as an upper body part.

The examiner maintains that Applicant is misreading Dalton's disclosure and erroneously focusing on alternative embodiments to the disclosed invention. Dalton's disclosure at col. 5, line 66 - col. 6, line 48 describes an access port having upper and lower wire mesh body parts (30, 31) that have a resealable septum 25 therebetween. The wire mesh has a number of sites at which the interior of the port can be accessed or entered. These sites are formed as the openings in the wire mesh resulting from the criss-crossing of the mesh strands. At each of these sites or openings the outer surface of the septum forms a portion of the device's exterior. See Figs. 1, 6.

As an alternative embodiment, Dalton describes:

in certain applications, e.g., applications in which the turbulence or pattern of fluid flow across the matrix septum is critical, it may be desirable to embed the matrix septum, i.e., one or both sides, with a coating which smooths the surface. In this regard a silicone potting resin or curable coating may be employed.

Dalton continues with examples showing the alternative embodiments of a potting resin and curable coating. Applicant's focus on the alternative embodiments misses the disclosure of the main invention. It is clear that Dalton describes the septum sandwiched between the upper and lower mesh as the invention and that only when a particular concern about fluid flow is present that an additional layer may be formed around the septum.

Applicant remarks that one of ordinary skill in the art would not consider the mesh 30 as an upper body part. Applicant does not explain his cryptic comment. The examiner maintains that mesh 30, shown and described in the specification, is an upper body part when using the plain meaning of the words.

C. 35 USC 1039(a) rejection of claims 60, 61, 63-65, and 68, based on Mittleman (U. S. Patent No. 4,000,740) in view of Tucker (U. S. Patent No. 5,718,682).

These rejections are withdrawn.

D. 35 USC 103(a) rejection of claims 113 and 114 based on Hancock, Dalton, Cone (U. S. Patent No. 5,108,377), Mittleman and/or Tucker and further in view of Luther (U. S. Patent No. 5,403,283).

These rejections are withdrawn.

E. 35 USC 103(a) rejection of claims 113 and 114 based on Hancock,
Dalton, Cone, Mittleman and/or Tucker and further in view of Ensminger (U. S.
Patent No. 5,556,381).

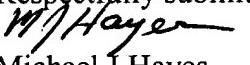
These rejections are withdrawn.

Allowable Subject Matter

All rejections to claims 113 and 114 are withdrawn and the claims are allowable. None of the prior art, solo or in combination, disclose the port and guidewire or stylet combination such that the entry site of the claimed access port is configured to permit insertion of the guidewire or stylet through the body portion and into the port outlet.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Michael J Hayes
Primary Examiner
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mjh
December 12, 2003

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